IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PEITION NO.2944 OF 2006

Kitabulla Jogi. ...Petitioner.

Versus

Municipal Corporation of Greater Mumbai & Ors. ...Respondents.

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Mr.Madhav Jamdar for the Petitioner.
Mrs. A.R. Joshi for Respondent Nos.1 to 3.
Mr. P.G. Sawant, AGP or Respondent No.4.

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CORAM : DR. D.Y. CHANDRACHUD, J.

December 20, 2006.

P.C.:

Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the Respondents waive service. By consent of Counsel and at their request taken up for hearing and final disposal.

The Petitioner was an occupant of a room in Dayabai Jayraj Chawl, situated at Sherichi Wadi, Forjett Hill Street, Mumbai-400 036. In support of his occupation, the Petitioner has relied upon a Ration

Card (Card No.259957) dated 21st December 1989, another Ration Card (No.1585780) dated 22nd June 1989 and a more recent Ration Card (No.0594743) dated 6th May 2000. The electoral Identity Card issued by the Election Commission of India also reflects the address of the premises in question.

Sherichi Wadi was a property which belonged to the Municipal Corporation and comprised of C. S. No. 1/653 and 4/653 (part) of the Malbar Hill Division. Nine chawls belonging to the Municipal Corporation were situated thereon. Sixteen structures were also located therein. According to the Petitioner, many of those occupants were occupants much prior to 1995. The Petitioner's own case is that he was in occupation prior to 1995. The Municipal Corporation undertook a redevelopment scheme under Development Control Regulation 33(7). The land was developed through a Co-operative Housing Society consisting of occupants. The Society – Jai Hari Society - undertook redevelopment through a developer. In the meantime, the tenants/occupants who were affected by the redevelopment were shifted to a transit camp in the Municipal Transit

Camp at Sane Guruji Marg. The office bearers of the Co-operative Housing Society called upon the occupants to vacate the structures in their occupation and by a letter dated 5th May 1997, the Petitioner was informed that he was to be shifted to Room No.35 at 44, Municipal Transit Camp, Sane Guruji Marg, Tardeo, Mumbai. The Petitioner accordingly vacated the premises, and shifted to transit accommodation.

In May 2000, a notice to show cause was issued to the Petitioner by the Municipal Corporation stating that the Petitioner was in unauthorised occupation of the transit premises. The Petitioner submitted a reply. Eventually, proceedings were initiated on 16th May 2000 under Section 105B(2) of the Bombay Municipal Corporation Act, 1888. The contention of the Petitioner is that the evidence that emerged during the course of the enquiry revealed the following facts and circumstances:

> "(i) Besides the Municipal chawls, clearance of said 16 structures was imperative for redevelopment of Sherichi Wadi.
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> -(ii) No inventory about the structures cleared at the time of redevelopment is available.

-(iii) Admission that the Petitioner was in occupation of a part of Sherichi Wadi before its clearance for the redevelopment.

-(iv) Redevelopment of the site was not possible unless the occupation of the Petitioner was cleared.

-(v) On the Municipal records, the said premises has been shown as unallotted and hence unoccupied since 1997.

-(vi) The Municipal rent collecting staff, including the witness visited the transit camp site where the inquiry premises is situated and noticed that occupation of the inquiry premises.

-(vii) No action was taken since 1997 against the Petitioner on the alleged unauthorized occupation since May, 1997, till issue of quit notice in May 2000 on the Petitioner by the Municipal Advocate."

An order was passed on 29th July 2003 by the Enquiry Officer holding that the Petitioner was in unauthorised occupation and directing that the Petitioner be evicted in accordance with the provisions of Section 105B(1). The Petitioner carried the matter in appeal. The appeal was, however, dismissed by the Principal Judge of the City Civil Court by an order dated 18th September 2006.

At the hearing of the Petition, Counsel appearing on behalf

of the Petitioner has drawn the attention of the Court to Regulation 33 (7) of the Development Control Regulations of Greater Mumbai which provides as follows :

> "33(7) Reconstruction and redevelopment of cessed buildings in the Island City by Co-operative Housing Societies or of old buildings belonging to the Corporation. - For reconstruction/redevelopment to be undertaken by Co-operative Housing Societies of existing tenants or by Co-op. Housing Societies of landlords and/or occupiers of a cessed building of a category in Island City, which attracts the provision of MHADA Act, 1976 and for reconstruction/redevelopment of the Buildings of Corporation and Department of Police, Police Housing Corporation, Jail and Home Guard of Government of Maharashtra, constructed prior to 1940, the FSI shall be 2.5 on the gross plot areas or the FSI required for rehabilitation of existing tenants plus incentive FSI as specified in Appendix-III whichever is more.
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> Provided, however that with the previous

approval of the Government, MHADA/Corporation shall be eligible to get additional incentive FSI over otherwise permissible FSI as specified in Annexure III of these Regulations.

Provided, further that in cases of composite redevelopment scheme for plot having 'A' category as also 'B' category cessed building the above FSI shall be available.

Provided further that in cases of, reconstruction/redevelopment of buildings which have been declared as unsafe by the BHAD Board prior to monsoon of 1997, the above FSI will be available irrespective of category cessed building.

Provided further, that reconstruction/ redevelopment undertaken by proposed Co-operative Housing Societies of Landlords and/or Occupiers of a cessed building of 'B' category, and where composite development is undertaken by different owners of 5 or more plots the FSI required for Rehabilitation of existing tenants

plus incentive FSI as specified in Appendix III will be available."

Now, a perusal of Development Control Regulation 33(7) would indicate that the provisions thereof extend to reconstruction/ redevelopment undertaken by a Co-operative Housing Society of the existing tenants or by a Co-operative Housing Society of landlords and/or of occupiers of a cessed building falling in 'A' category which attracts the provisions of the MHADA Act, 1976. The benefit of DCR 33(7) has been extended not merely to those who are tenants in cessed 'A' Category buildings, but to occupiers as well. The reason for that is, that unless the occupiers were to join the in scheme for redevelopment, the scheme will not be capable of expeditious and effective implementation. In the present case the evidence of the Rent Collector who deposed in the course of enquiry shows that the occupants of Sherichi Wadi were shifted to a transit camp to facilitate redevelopment. After the redevelopment was completed, the tenants were shifted back from the transit accommodation. In the course of the cross-examination of the witness it emerged that the Petitioner

was in occupation of a hutment by the side of Devraj Chawl. This area was specifically covered by the redevelopment of Sherichi Wadi and no redevelopment was possible unless the premises of the Petitioner were cleared from the site. The oral evidence of the witness is also substantiated by the documents produced by the Petitioner in proof of his occupation including among them, Ration Cards and the electoral Identity Card. In this view of the matter, there is merit in the contention of the Petitioner that his premises were an integral part of the redevelopment of Sherichi Wadi and that the demolition of his premises was necessary to facilitate the work of redevelopment. The Petitioner cooperated in the process by shifting to the transit accommodation. The Municipal Corporation in its affidavit has stated that the letter addressed to the Petitioner calling upon him to shift to the Transit Camp was not issued by the Municipal Corporation, but by the Co-operative Housing Society which was formed. That however, would not advance the case of the Corporation any further because the fact does remain that the Petitioner was an occupant of premises falling within the redevelopment of Sherichi Wadi. Mrs.Joshi, Counsel appearing on behalf of the Municipal Corporation has stated that the

Corporation would have to verify as to whether any benefits were given to the developer in order to facilitate the rehabilitation of the Petitioner among 16 other structures which were affected at the site of Sherichi Wadi together with nine chawls. Undoubtedly, it would be open to the Municipal Corporation to determine as to whether any benefits were given to the developer and if that is so, to ensure that those benefits are not diverted for an unauthorised purpose. At the same time, evicting the Petitioner from the transit accommodation would be a completely arbitrary exercise unless the Petitioner is suitably rehoused. The present Petitioner who has extended co-operation to the redevelopment scheme, cannot be left in the lurch. In these circumstances, I am of the view that an appropriate direction would be necessary so as to ensure that the entire case of the Petitioner is considered afresh. Hence the following order:

-(i) The Assistant Commissioner, Estates Department, shall within a period of four weeks of being furnished with a certified copy of this judgment by the Counsel appearing on behalf of the Petitioner, process the case of the Petitioner for the allotment of alternate accommodation at or in the vicinity of Sherichi Wadi in accordance

with law. Counsel appearing on behalf of the Municipal Corporation has stated on instructions that the Assistant Commissioner shall be required to obtain the sanction of the Additional Municipal Commissioner. If this is to be so, all the necessary sanctions shall be granted expeditiously and a final decision shall be taken by the Municipal Corporation within a period of three months from the date on which a certified copy of this judgment and order is produced before the Assistant Commissioner;

-(ii) In the event that it is not possible to accommodate the Petitioner in the area which has been redeveloped under DCR 33(7) under the Sherichi Wadi Redevelopment Project, it would be open to the Municipal Corporation to allot other suitable premises preferably in the vicinity to the Petitioner in accordance with law. This exercise shall also be carried out within the same time schedule which has been set out in the earlier part of the order;

-(iii) The order of eviction from the Transit Camp shall not be implemented until after the expiry of a period of two weeks from the

date on which possession is given to the Petitioner of permanent alternate accommodation under DCR 33(7);

-(iv) The Municipal Corporation shall not be precluded from taking necessary steps in accordance with law against the developer and/or Co-operative Housing Society in the event that it is found that there has been any breach by either of the aforesaid two entities in carrying out the terms on which permission was granted for redevelopment. It is, however, clarified that before doing so, the Municipal Corporation shall give a reasonable opportunity of being heard to the concerned parties.

The petition is accordingly disposed of.

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